

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

ANTHONY TRUCKING, INC.

**ADMINISTRATIVE
CONSENT ORDER
NO. 2007-WW- 12**

**TO: Anthony Trucking, Inc.
c/o Neil Anthony
21078 Lake Ave.
Le Mars, IA 51031**

I. SUMMARY

This administrative consent order (consent order) is entered into between Anthony Trucking, Inc. (Anthony Trucking) and the Iowa Department of Natural Resources (Department). Anthony Trucking hereby agrees to cease illegal operation of a wastewater disposal system and to pay a penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this consent order should be directed to:

Relating to technical requirements:

Tom Roos, Environmental Specialist

IDNR Field Office #3
1900 N. Grand
Spencer, IA, 51301
Ph: 712/262-4177

Relating to legal requirements:

Carrie Schoenebaum
Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

II. JURISDICTION

The parties hereby agree that this consent order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The Department and Anthony Trucking hereby agree to the following statement of facts:

1. Anthony Trucking is owned and operated by Neil Anthony and is located at Section 32, T 92 N, R 45 W in Plymouth County. This facility transports liquid fertilizers via tanker trailers. Anthony Trucking contains a trailer washout bay which generates wastewater that flows to an earthen storage lagoon.

2. On September 5, 2006, Mr. Anthony signed Administrative Consent Order No. 2006-WW-21 and on September 13, 2006, it became final. This administrative consent order concluded that Anthony Trucking operated a wastewater disposal system without a permit. In addition, it prohibited and required that Anthony Trucking do the following:

1. Anthony Trucking shall cease all illegal discharges from its wastewater lagoon;

2. Anthony Trucking shall apply for an Iowa Operation permit within 30 days of the receipt of this order, or enter into an agreement with a permitted wastewater treatment plant to accept its waste;

3. If Anthony Trucking applies for an Iowa Operation permit this application shall contain the following information: (1) a completed Department National Pollutant Discharge Elimination System Permit Application Form 1, (2) the volume of water discharged to the lagoon on a monthly basis, (3) the pollutant characteristics of the wastewater that is land applied including at a minimum the concentrations of total nitrogen and total phosphorus, (4) a detailed description of the existing wastewater disposal system including the size (length, width and depth) of the lagoon, (5) a detailed description of the land application system including the method of application (e.g. traveling gun, center pivot, etc.), (6) the frequency and duration of application, (7) a topographic map and/or aerial photo showing the exact locations of the lagoon, (8) the area where wastewater is land applied and (9) any wells, houses, streams or roads located within 500 feet of the land application site.

4. If Anthony Trucking applies for an Iowa Operation permit Anthony Trucking shall provide any additional information that is needed by the Department in order to issue the permit.

5. If Anthony Trucking enters into a treatment agreement with a permitted wastewater treatment plant to accept its waste, it shall notify the Department of such an agreement, as required by 567 IAC 64.3(5).

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Further, all records of disposal in this manner shall be kept on site and be available to the Department upon request;

6. If Anthony Trucking either enlarges or modifies its wastewater lagoon it shall apply to the Department for a Construction permit prior to such activities;

7. Pay a penalty of \$5,000 within 30 days of the Director of the Department signing this order.

3. On December 13, 2006, Tom Roos an Environmental Specialist of the Department, went to Anthony Trucking after noticing water running across its property into a road ditch on Lake Avenue. While there, Mr. Roos spoke with Mr. Anthony who stated that the water was from washing the outsides of the tankers at the truck wash. Mr. Roos observed that the water running to the ditch contained a significant amount of grease and solids. Mr. Anthony also stated that Anthony Trucking has been pumping its lagoon and land applying the wastewater even though it had not yet applied for an Iowa Operation Permit.

4. On December 22, 2006, a Notice of Violation (NOV) was sent by certified mail to Mr. Anthony regarding the December 13, 2006, discharge. This NOV informed Mr. Anthony that Anthony Trucking was in violation of 567 IAC 64.3(1) and Iowa Code section 455B.186.

567 IAC 64.3 (1) states that "no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director"

Iowa Code section 455B.186 states, "[a] pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director."

This NOV required Anthony Trucking to immediately cease all wastewater discharges from its property and submit an Iowa Operation Permit application. Moreover, this letter informed Mr. Anthony that because it was in non-compliance with Administrative Consent Order No. 2006-WW-21 this matter would be forwarded to the Legal Services Bureau for possible enforcement.

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IV. CONCLUSIONS OF LAW

The Department and Anthony Trucking hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The above stated facts show noncompliance with this provision.
2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. The above stated facts show noncompliance with these provisions.
3. Iowa Code section 455B.191 (1) states in part, "[a]ny person who violates ...any permit, rule, standard, or order issued under part 1 division III of this chapter [chapter 455B] shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violations." The above stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, the Department orders and Anthony Trucking agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Anthony Trucking shall cease all illegal discharges from its truck wash facility; and
2. Pay a penalty of \$5,000 within 30 days of the Director of the Department signing this consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of

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penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

2. **Economic Benefit:** The wastewater discharged from this facility could have been managed more appropriately through the use of alternative disposal methods such as permitted land application. This would have been more time consuming and would have cost more than the method used. Therefore, \$1,000.00 is assessed for economic benefit.

3. **Gravity of the Violation:** The discharge of untreated wastewater constitutes an immediate or potential danger to the environment, as well as a threat to the public's health and safety. Therefore, \$1,000.00 is assessed for gravity.

4. **Culpability:** Prior to this incident Anthony Trucking had been informed by the Department that this type of discharge is illegal and that the treatment and disposal of wastewater from this type of facility requires a permit from the Department. Moreover, on September 5, 2006, Mr. Anthony signed Administrative Consent Order No. 2006-WW-21 and on December 13, 2006, Mr. Anthony admitted to violating that administrative consent order. This behavior shows complete disregard for Iowa's environmental statutes and rules. Therefore, \$3,000.00 is assessed for culpability.

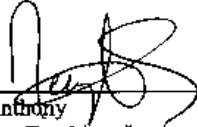
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This consent order is entered into knowingly by and with the consent of Anthony Trucking. By signature to this consent order, all rights to appeal it are waived.

VIII. NONCOMPLIANCE

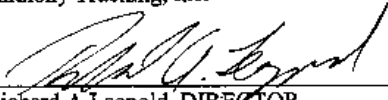
Compliance with sections V.1- V.2 of this consent order constitutes full satisfaction of all requirements pertaining to the violations described in this consent order. Failure to comply with this consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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Neil Anthony
Anthony Trucking, Inc.

Dated this 17 day of
July, 2007.



Richard A. Leopold, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24 day of
July, 2007.

EPA, Anthony Trucking, Inc., Field Office 3, Carrie Schoenebaum; Tom Roos, I.B.1.